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ATTORNEY GENERAL

## THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

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August 16, 2006

Mary Cottrell  
Secretary  
Department of Telecommunications and Energy  
One South Station, 2nd Floor  
Boston, MA 02110

**Re: Massachusetts Electric Company and Nantucket Electric Company, D.T.E.  
06-5**

Dear Ms. Cottrell:

On January 27, 2006, Massachusetts Electric Company ("National Grid") and Nantucket Electric Company ("Nantucket") d/b/a National Grid (collectively, "National Grid" or "Company") filed with the Department of Telecommunications and Energy ("Department") a rate reconciliation and adjustment filing pursuant to G.L. c. 164, § 1A(a), and 220 C.M.R. § 11.03(4)(e). On February 28, 2006, the Department approved, subject to further investigation and reconciliation, an average base transmission charge of 0.871¢/kWh for National Grid and Nantucket. *Massachusetts Electric Company/Nantucket Electric Company*, D.T.E. 06-5, at 10 (2006). On August 1, 2006, the Company filed the supplemental testimony of Theresa M. Burns and Susan L. Hodgson requesting approval to implement an increase in the approved transmission charge. National Grid seeks to increase its average base transmission charge to 1.199 ¢/kWh for consumption on and after September 1, 2006. National Grid states that this proposed increase results from an underestimation of reliability must run ("RMR") costs billed to National Grid by the Independent Systems Operator-New England ("ISO-NE"). On August 8, 2006, the Department issued an order of notice requesting comments on the National Grid proposal. Pursuant to the Department's order, the Attorney General submits this letter as his Comments.

The Department should reject National Grid's request to increase transmission rates and maintain the current base transmission charge of 0.871¢/kWh pending the further investigation called for in the Department's February 28, 2006 order. The proposed increases are overstated and designed to insure an over-recovery of transmission costs, and there is a lack of substantial evidence that the recovery of the RMR costs are reasonable or were prudently incurred.

### **The Proposed Transmission Rate Is Overstated**

National Grid seeks reimbursement for RMR rates that it will not be required to pay. National Grid's expert, Susan L. Hodgson, explains in her testimony that total annual RMR charges will be approximately \$96 million, rather than National Grid's previous estimate of \$8.6 million. Hodgson bases this estimate on National Grid's share of RMR charges for five generators: Mystic, Exelon New Boston Unit 1, Pittsfield, Berkshire Power and ConEd West Springfield 3. According to Hodgson, National Grid is responsible for 22% of the NEMA region RMR costs, and 58% of the WCMA region RMR costs. Hodgson claims that she accounts for transition payments each generator will receive pursuant to the Forward Capacity Market ("FCM") recently approved by FERC, and nets those amounts against the RMR costs National Grid seeks to be reimbursed for.

Hodgson's analysis suffers from several flaws. First, Hodgson assumes that current settlement negotiations in three of the RMR proceedings (Pittsfield, Berkshire, and West Springfield) will result in each generator receiving its full proposed cost-of-service. It is more likely that the generators will ultimately receive an RMR rate well below their filed rate. Second, as Hodgson notes, the Exelon New Boston Unit 1 will no longer be needed for reliability, pending the completion of NSTAR's 345 kv transmission line. National Grid, therefore, should expect to realize a decrease in RMR costs relative to the termination of Exelon New Boston's RMR Agreement. Third, Hodgson fails to properly net out all Forward Capacity Market transition payments. Beginning in December 2006, each generator will receive \$3.05/kW-month for capacity services. This rate will increase to \$3.75/kW-month in June 2008, and \$4.10/kw-month in June 2009. For the period December 2006 – February 2007 alone, Mystic will receive approximately \$12 million in transition payments. Hodgson's analysis does not account for the transition payments due to the generators, or the increase in transition payments over time. Last, Hodgson fails to acknowledge that National Grid's RMR payment obligation is subject to each generator's inframarginal revenues. All inframarginal revenues the generator receives in the energy, capacity or ancillary services markets are netted against the RMR payments, prior to billing ISO-NE and National Grid. National Grid, therefore, can expect to pay well below the filed RMR rates, after accounting for transition payments and inframarginal revenues.

### **There Is No Evidence That The Recovery Of The RMR Costs Is Reasonable Or The Costs Were Prudently Incurred**

In contrast to the other major Massachusetts utilities, (e.g., NSTAR and the Massachusetts Municipal Wholesale Electric Companies ("MMWEC")), National Grid failed to protest or take any action to oppose the RMR Agreements for which National Grid now seeks compensation. For example, in December 2005, Mystic filed its proposed RMR Agreement. The intervening parties, including NSTAR, MMWEC and the Attorney General, filed several

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protests, requests for rehearing, and other pre-hearing briefs, and engaged in extensive settlement negotiations with Mystic prior to terminating the settlement negotiations in June 2006. All the intervening parties devoted significant resources to protecting ratepayers from the unjust and unreasonable rates Mystic seeks. These same intervening parties are now preparing for resource-intensive litigation in the Mystic proceeding before FERC in February 2007. National Grid, conversely, failed to protest Mystic's proposed rates or even intervene as an interested party. National Grid, similarly, failed to protest or object to the RMR rates Pittsfield, Berkshire, and West Springfield now seek, and for which National Grid now requests reimbursement.

There is simply no evidence that the Company has taken any steps to protect customers from the costs of RMR agreements by opposing them in regulatory proceedings or undertaking transmission upgrades to eliminate them.<sup>1</sup> Simply because National Grid incurred costs under FERC tariffs does not mean that they may automatically recover the costs from retail customers. The Company has the burden of proving the reasonableness of the actions which caused it to incur the transmission costs. Included in that burden is a demonstration that the Company took steps to mitigate these costs. "[T]he Company has an ongoing obligation to provide reliable service at the lowest cost to customers." *Massachusetts Electric Company*, D.P.U. 95-40, p.83 (1995). The utility must show that a reasonable range of options has been considered before choosing one particular plan. See *Mass-Save, Inc.*, D.P.U. 95-46, p. 10 (1995). The Department has a "regulatory goal of ensuring that utilities provide safe and reliable service at the lowest possible cost to society." *Electric Industry Restructuring*, D.P.U. 95-30, at 1-2 (1995). The Department is required to inquire into whether utility retailer prudently chose to pay FERC rate as opposed to other options. *Appeal of Sinclair Machine Products, Inc.*, 126 N.H. 822, 825 (1985). If the Department finds that the Company has been unreasonable or imprudent in its performance of this duty, in light of the facts which were known or should reasonably have been known by the Company at the time of the actions in question, the Department is required to deduct from the transmission charges those costs plus interest associated with the Company's failure to act reasonably and prudently. *Commonwealth Electric Company, v. Department Of Public Utilities*, 397 Mass. 361 cert. denied, 481 U.S. 1036 (1987); *Boston Gas Company*, D.P.U. 93-78, p. 24 (1993)("A prudence review must determine whether the utility's actions, based on all that it knew or should have known at the time, were reasonable and prudent in light of the circumstances which then existed."). Rates paid by customers must only represent just and reasonable costs, prudently incurred. G. L. c. 164, § 94.

The Attorney General requests that the Department suspend the proposed transmission rate increase for future review and reconciliation. The Department should open an investigation, including discovery, hearings and briefs, into the Company's calculations and basis for the requested rate increase.

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<sup>1</sup> The transmission upgrades set forth in the testimony of Philip Tatro, except for some minor improvements related to the Salem power plants, are not National Grid proposals. There is no evidence concerning any transmission upgrades National Grid itself may be pursuing or how it is assisting other utilities in transmission upgrades. The Tatro testimony only contains vague references to proposed upgrades.

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Respectfully submitted,  
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By: \_\_\_\_\_  
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Cc: Service List